



Independent Contractors

This information is intended to clarify the status of Independent Contractors (ICs) who are working in positions reportable to the Montana Teachers' Retirement System (TRS).

ICs Who Are *Not* TRS Retirees

In general, an independent contractor is not eligible to participate in TRS.

If you are not a TRS retiree and you are working in a position reportable to TRS as an independent contractor, your employer has the obligation to establish that you are actually an independent contractor rather than an employee. While TRS may accept an independent contractor exemption certificate as prima facie evidence of independent contractor status, TRS may also require a full analysis applying the IRS's factors to determine that a position reportable to TRS is actually filled by an independent contractor. Unless and until your employer establishes that you are actually an independent contractor, TRS assumes you are an employee of that employer and you must be reported to TRS by that employer. (*See Rule 2.44.308, Administrative Rules of Montana*)

ICs Who Are TRS Retirees

In general, if you are a TRS retiree and you are working in a position reportable to TRS as an independent contractor you are required to be reported to TRS. All of the time you work and all of the compensation you receive from the TRS employer must be reported to TRS, regardless of when you retired. (*See 19-20-731(4), MCA*). This is true whether or not a full analysis applying the IRS's factors would establish that you are or are not, actually, an independent contractor. Your actual status as an independent contractor is not relevant if you are a TRS retiree. TRS will accept the representation of you and your employer that you are an independent contractor. All that matters is that you are *performing job duties and functions* that would make you eligible to participate in TRS if you were not identified as an independent contractor.

Your employer must report, as compensation, ***all amounts*** paid to you by the employer related to your service as an independent contractor. The usual exceptions from working retiree compensation for health insurance premiums, housing, travel expenses, de minimis fringe benefits, and payroll taxes if paid on behalf of an employee by the employer (*as set forth in 19-20-731(1)(b), MCA*) do not apply to independent contractors as the TRS employer paying the amounts is not the actual employer of an independent contractor.

If you retired with an effective date of retirement on or after August 1, 2011, all amounts reported as compensation to you as an independent contractor will be counted against your earnings limitation. If you enter into an agreement or multiple agreements where the aggregate of the amounts to be earned exceeds your earnings limitation, your retirement benefit will be suspended as of your first date of service under one or more agreements. If you exceed your earnings limitation in a fiscal year, your retirement benefit will also be suspended until you terminate your service as an independent contractor and apply to reinstate your retirement benefit. As an independent contractor, you will not be returned to active member status with TRS, and will not earn additional creditable service with TRS based on your service as an independent contractor.

Other issues to consider if you intend to work as an IC after retirement

The requirement that you

1. **terminate employment in all positions reportable to TRS** to be eligible for retirement benefits, and
2. **complete the 150 calendar day break in service** requirement

both apply to work in a position reportable to TRS performed by a TRS retiree as an independent contractor.

Continuing to work or returning to work in a TRS-reportable position before you have attained retired member status and have fulfilled the 150 calendar day break in service requirement will result in your being returned to active member status retroactive to your date of retirement and having to repay all retirement benefits that were paid to you, with interest.

If you have any further questions, please contact the TRS Retired Payroll staff at (406) 444-3185 or (406) 444-3135.

In compliance with the Americans with Disabilities Act of 1992, alternative accessible formats of this document will be provided upon request. Please contact trsoutreach@mt.gov or call us at 406-444-3134.